

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of
Public Interest Obligations
Of TV Broadcast Licensees

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MM Docket No. 99-360

NOTICE OF INQUIRY

COMMENTS OF THE CONSUMER FEDERATION OF AMERICA

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I. INTRODUCTION

The Consumer Federation of America (CFA) is the nation's largest consumer advocacy organization. CFA is a non-profit association of 260 state and local affiliates representing consumer, senior citizen, low-income, labor, farm, public power and cooperative organizations. CFA represents consumer interests before Congress and federal agencies and assists its state and local members in their local jurisdictions.

CFA commends the Federal Communications Commission (FCC) for opening this Notice of Inquiry (NOI) into the public interest obligations of digital broadcast licensees. However, CFA strongly urges the FCC to expand the scope of inquiry to examine consumer "pocketbook" implications that will be unique to the broadcast of digital television. While digital television has the potential to offer consumers new educational, civic participation and programming choices, it also presents very serious potential hazards. Some of these hazards, such as the possibility that the significant costs that will be incurred to convert from analog to digital television will diminish access to the media for many Americans who are already on the wrong side of the "digital divide," are addressed by the NOI. The NOI also properly includes queries regarding the effect of digital television on programming diversity and civic and political discourse, as well as how local broadcasters can respond to community needs.

However, several extremely important consumer issues that stem directly from the likely commercial model that will pay for digital TV are not addressed by the NOI. These concerns are unique to the digital era. These issues include the high likelihood that viewers' privacy could be invaded on an unprecedented scale unless protections are in place, as well as the very strong incentive that broadcasters will have to abuse this information by "overselling" to viewers. It is

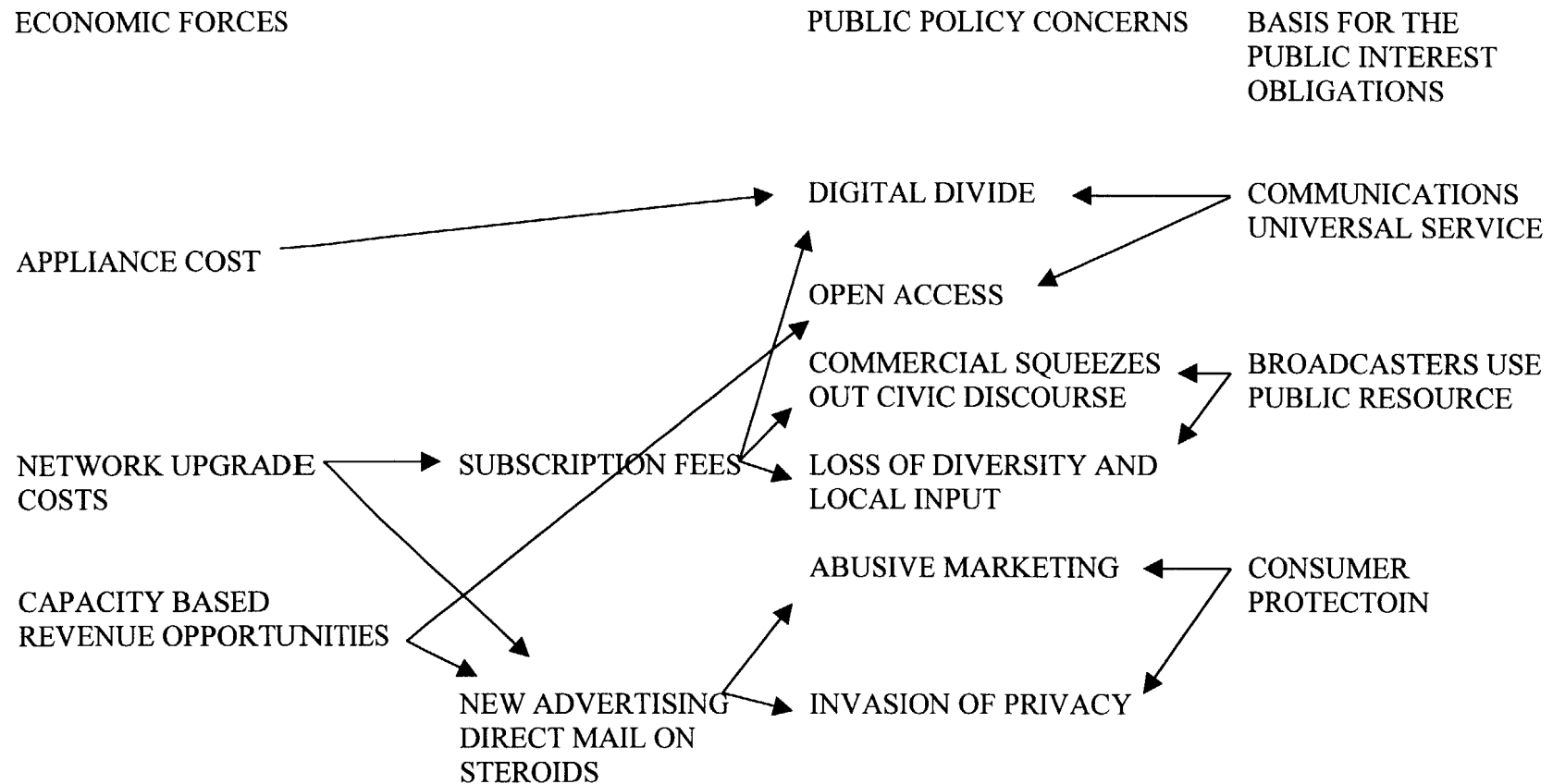
inconceivable that the FCC would conduct an examination of the public interest obligations of digital broadcasters and not consider the far-reaching consumer consequences of this new medium.

II. SUMMARY

The Commission's view of its role in establishing the public interest obligations on digital TV must recognize that digital TV has been swept up in the convergence of the television and the telecommunications industries. The traditional obligations that public policy has properly asked broadcasters to shoulder as the means of mass communications are intersecting with the traditional obligations that public policy has asked telecommunications companies to shoulder as the means of interactive communications. The traditional limits that have been placed on advertisers and markets must be extended, and perhaps expanded, to apply to this new more powerful marketing medium. We believe that the public interest obligations that should fall on this new medium of communications should be commensurate to the immense economic and political power that it will possess.

We see very powerful economic forces creating huge commercial opportunities and potentially significant social problems (see Exhibit 1). We believe that the Commission has more than adequate authority to define an aggressive public policy that will allow the new industry to develop while preserving and advancing the fundamental goals of consumer protection, civic discourse, and social responsibility.

**EXHIBIT 1:
THE EXPANDING ROLE OF DIGITAL TV AND THE BASIS FOR PUBLIC INTEREST POLICY**



A. The Digital Television Business Model Presents Unique Consumer Concerns

At one time, it might have been possible, or fashionable, to think about digital television as just a better way to deliver better broadcast television pictures with one signal through high definition television (HDTV). The much more likely scenario is that, rather than using their spectrum to deliver one high-quality picture, broadcasters will divide it up into multiple channels and sell more entertainment, as well as goods and services. As digital television expands the capacity to deliver programming, and the convergence of communications, computing and television entertainment takes hold, pay television services are expected to increase in number and price.

The new services could be expensive because of the studio equipment necessary to produce programming that takes advantage of the new appliance and also because of the infrastructure necessary to deliver interactive services is expensive. Whether the signals are broadcast over-the-air or through cable or satellite technologies, subscription services are expected to proliferate, with subscription fees rising.

B. Invasion of Consumer Privacy and the Abuse of Information to Oversell

The drive to fill more advertising space and sell more products over the digital communications network and the ability of that network to gather information in an interactive context raises concerns about the use of private information for marketing. On the interactive network, programmers and system operators can know what people watch and what they buy with remarkable detail. This information is extremely useful in targeting advertising and increasing sales. Since there is a strong need to sell more, it is hard to imagine that digital broadcasters will not exploit this information to the fullest.

The result will be an electronic “direct mail on steroids” pumped up by the ability of viewers to click through digitally inserted advertising for purchases. The advertising will be targeted at demographically compatible viewers identified by detailed information on viewing patterns and past purchases. This information will be embedded in programming, as suggested by an intuitive programming guide and/or restricted by the affiliate relationships of the broadcaster or cable provider.

Digital television also presents the likelihood of extremely aggressive advertising and “overselling” on a scale that has never occurred, not even on the Internet. The ability to distinguish advertisements from entertainment programming and to exercise informed choice will be undermined in this new media environment, especially for children. As advertising becomes more immediate through the use of interactive technology, consumers are disarmed. Electronic transactions that provide little opportunity for consumers to reflect on the purchase and make post-purchase remedies more uncertain increase concerns about overselling.

C. Widening the Digital Divide

The commercial model that is driving digital TV leads directly to a second public policy concern that is addressed in part IIC of the NOI. The expense of equipment, the cost of services, and the targeting of marketing points to a commercial model in which high-value, high income consumers participate and are targeted.

If digital TV were just a luxury diversion for the rich, its potential cost might not be a great source of concern to consumers and consumer advocates. However, television is the primary source of news and information dissemination in our country and consumers rely on television as their primary source of gathering information. Broadband services, delivered over

digital TV, hold the potential to increase the power of the TV medium by adding interactivity and much higher visual quality to a medium that already has great communicative power due to its reach, immediacy and real time delivery. Its role in e-commerce and political expression may be unprecedented.

Companies introducing technologies can identify the likely “adopters” and orient their product distribution to maximize the penetration within that market segment. The competitive energies of the industry are focused on the “premier” segment, with innovative offerings and consumer-friendly pricing, while the remainder of the population is ignored or suffers price increases. The merging of informational, educational and employment opportunities over the Internet with the commercial activities of interactive TV raises concerns that the commercial model might further isolate those who have been disadvantaged by the digital divide.

There is nothing inherent in the digital transformation that will alleviate the problem of information “haves and have-nots” and much that could exacerbate it. The digital transformation does nothing to reduce the economic, personal and social barriers. As the effects of the digital transformation spread, those who do not have command of the technology become marginalized.

D. The Threat To Programming Diversity And Civic Discourse

Because of the development of powerful commercial models that exploit the new capabilities of digital TV, it will likely take vigorous public policy intervention to ensure that digital TV serves the public interest with diverse program choices and socially relevant content and access to the means of public expression of views. The need to produce and sell commercial programming may squeeze out educational, cultural and informational programming

or cause this type of programming to be sold on a pay-per-view basis, limiting its availability to part of the population.

This traditional public policy debate in the broadcast area has its origins in the longstanding public policy of demanding socially responsible behavior from broadcasters who have used a scarce public resource – broadcast spectrum – at no charge. Although it can be argued that spectrum is no longer scarce, there is no question that it is still very valuable and broadcasters use it without paying for it. The nucleus of the debate remains the same. It focuses on broadcasters receiving their new spectrum free of charge, without restrictions in place to dictate how they can use the fresh channels and airtime.

Because policymakers recognize the uniquely important role that broadcast media play in civic discourse – radio and later television – policy has sought to prevent concentration of economic power from controlling the flow of ideas by placing limits on the ownership of media outlets and imposing obligations to expand programming beyond what is simply profitable. The advent of interactive multimedia digital TV increases the power of the medium and the commercial drive of digital TV reinforces that concern.

E. Local Broadcasters Should Meet Consumer and Public Interest Obligations

Public policy should seek compensation for the use of the broadcast spectrum, which remains a remarkably valuable input into the production of broadcast television. It should seek to balance the powerful forces driving the commercialization of the TV industry by promoting culturally diverse programming that may not be commercially attractive but that is educational and uplifting. Public policy should seek to ensure that this new more powerful medium does not result in the abuse of political power by those who control it and ensure that digital TV does not

widen the gap between information “haves” and “have nots.” Obligations should be placed on those who benefit from the federally mandated transition to digital TV help to narrow the gap that currently exists.

Local broadcasting will play a vital role in the distribution of programming. Ensuring cultural diversity and socially relevant programming is a matter of local programming to meet community needs. The gathering and compilation of viewer information will be a local matter – with information gathered in the set top box and compiled by the local cable operator or the local broadcaster. It is highly likely that the local station will be the one that controls the information for marketing purposes.

F. Policy Recommendations

Given the initial nature of this proceeding, the Commission should identify broad categories of public interest policies and outline its existing authority and public interest policies.

Privacy: The potential invasion of privacy under this business model will be massive. Without consumer protections in place, communications companies and media providers will gather information about consumer viewing habits, purchase patterns and lifestyle and use or resell that information for targeted marketing. The FCC should require broadcasters to obtain consumer consent before sharing information with third parties and corporate affiliates and to provide consumers with notice of broadcasters’ information sharing practices. Consumers should also have the right to review information collected about them.

Consumer Protection: The FCC should propose comprehensive measures to protect consumers who make purchases through digital television and that curb potential marketing abuses. These measures should include disclosures and remedies to protect consumers at every

stage of the purchase process, such as “cooling off periods” before sales become final. The FCC should also consider options to allow consumers to block unauthorized purchases and restrictions on interactive digital advertising directed at children.

Digital Divide: The FCC should monitor the market to ascertain whether equipment costs, subscription fees and pay-per-view charges are affordable and reserve the right to require broadcasters to charge reasonable rates for pay services. The Commission should also extend the principles of commercial leased access and free, or low cost civic discourse channels and require the production of new programming with diverse content.

Local Input: One important avenue for accomplishing many of these goals would be to place obligations on local broadcasters. Local broadcast stations can play a crucial role in helping to address these issues precisely because they are local. Local broadcasting has a long-standing obligation to promote the public interest because of its institutional nature. Local broadcasters will use digital spectrum to distribute the majority of the most watched programming and they have not paid for that spectrum.

There is no one federal policy that can solve these problems. There should be many local policies, but there is one step that is necessary at the federal level. Because the allocation of spectrum was a federal act, federal action is necessary to ensure that local use of the spectrum will be responsive to local demands. Federal regulators have the authority to require local broadcasters to be responsive to local needs, provide access to local programming, and work out privacy policy in response to local values. If they do not, local broadcasters are likely to resist because they will be caught up in the whirlwind of commercial forces that the new technology and federal policy have created.

Programming Diversity: In exchange for new digital spectrum that has been granted at no cost, the FCC should increase public interest obligations on broadcasters. This could be

achieved in a number of ways, i.e. requiring programming directed at typically neglected population groups, instituting minimum requirements for public service announcements and public affairs programming, etc.

III. DIGITAL TELEVISION COMMERCIAL MODEL AND COSTS

The key “pocketbook,” programming and access issues that the FCC should examine all stem from an analysis of the potential problems created by consumer economics of the transition to digital, broadband TV, as well as the likely business model that will be used to pay for digital television.

In the few years since federal policy became committed to the rapid deployment of digital television, in general, and HDTV, in particular, the consumer pocketbook issues have grown quite complex. At one time it might have been possible to think about HDTV as just a better way to deliver broadcast television pictures. In this simple world, consumers who had analog televisions would replace them with digital televisions and receive a much better picture. That simple formulation of the problem has dropped by the wayside.

It now appears that standard definition digital television, not high definition, will be the dominant form of digital TV. The quality of the picture will be less important than the new services made available and the new ways in which the TV is used. Digital TV will be thoroughly embedded in the overall transition to interactive, digital multimedia services. Digital TV is now viewed as much more than an appliance. Because of the way the services it supports will be delivered, it is more likely to be part of the terminal in the home – the customer premise